



September 21, 2000

Mr. Mike Atkins  
McMahon, Tidwell, Hansen, Atkins & Peacock  
Attorneys at Law  
4001 East 42<sup>nd</sup>, Suite 200  
Odessa, Texas 79762

OR2000-3659

Dear Mr. Atkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139226.

The Ector County Independent School District (the "district"), which you represent, received a request for ten items related to the gifted and talented program for a time period of 1990 through July 1, 2000. You state that you have provided responses to several of the items, but assert that providing the remaining requested information would require the district to answer factual questions or to copy commercially available books for the requestor. We have considered your arguments and reviewed the submitted information.

We agree that the Public Information Act (the "Act") does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request, but a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 563 (1990), 561 (1990), 555 (1990), 534 (1989). We agree that the items you identify as requiring answers to factual questions (items 1, 3, 5, 8, 9, and 10) do require the district to answer factual questions. However, each of those items, except item 10, also asks for documentation to support your answer. Your letter to the requestor indicates that you have provided the requestor documents related to items 1, 5, and 9. You have also responded to items 6 and 7 and partially responded to items 2, 3, 4, and 8. You are not required to answer the questions posed in item 8 or 10, and if, as you state, there are no documents responsive to item 10 or

the "budget figures" component of item 8, you need not further address item 10 or the "budget figures" component of item 8.

In response to items 2 and 4, you have provided the requestor an itemization of charges pursuant to section 552.2615 of the Government Code. It appears that you furnished the itemization to the requestor on July 14, 2000. If the requestor did not respond to that itemization within the mandated 10 days, the request for items 2 and 4 is considered to have been withdrawn. Gov't Code § 552.2615(b).

Finally, you assert that some of the requested information is commercially available. Your responses to items 3 and 8 refer to the Texas Administrative Code, the Texas Education Code, and four other commercially available publications. Section 552.027 of the Government Code provides:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

This section is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. Therefore, section 552.027 excludes commercially available research material from the definition of "public information." However, if any information in a book or publication is "made part of, incorporated into, or referred to in a rule or policy of" the district, the district must allow inspection of that information. Gov't Code § 552.027(c). You inform us that none of the books responsive to the request have been made part of, incorporated into, or referred to in a rule or policy of the district. We conclude that you need not produce publications or resource materials which were purchased or acquired by the district for research purposes and which are available at the public library or otherwise commercially

available. In summary, the district need not respond to item 10 or the "budget figures" component of item 8 and need not provide copies of any commercially available information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Michels Anderson", with a long horizontal flourish extending to the right.

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 139226

Encl. Submitted documents

cc: Mr. Gerald Fugit  
412 North Texas  
Odessa, Texas 79761  
(w/o enclosures)